

Emergency Rule
LSA Document #06-245(E)

DIGEST

Temporarily adds provisions to explain and implement the utility services use tax as contained in HEA 1001-2006. Authority: HEA 1001-2006, SECTION 55. Effective July 1, 2006. *NOTE: [IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. This document was filed with the Publisher on July 18, 2006.*

SECTION 1. "Gross consideration" refers to anything of value, including cash or other tangible or intangible property, that a taxpayer pays in consideration for the retail purchase of utility services for consumption before deduction of any costs incurred in providing the utility services.

SECTION 2. Subject to [IC 6-2.3-2](#) (imposition) and [IC 6-2.3-3](#) (classification of receipts as gross receipts), gross receipts derived from activities or businesses or any other sources within Indiana include furnishing utility services to an end user in Indiana for consumption in Indiana, regardless of whether the:

- (1) utility services are delivered through the pipelines, transmission lines, or other property of another person;**
- (2) taxpayer providing the utility service is or is not a resident or a domiciliary of Indiana; or**
- (3) transaction is subject to a deduction under [IC 6-2.3-5-5](#) ([IC 6-8.1-15](#) and the Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.)).**

SECTION 3. (a) An excise tax, known as the utility services use tax, is imposed on the retail consumption of utility services in Indiana that are billed after June 30, 2006.

(b) The utility services use tax is measured by the gross consideration received by the seller from the sale of the commodities or services listed in [IC 6-2.3-1-14](#)(1) through [IC 6-2.3-1-14](#)(6):

- (1) Electrical energy.**
- (2) Natural gas, either mixed with another substance or pure, used for heat, light, cooling, or power.**
- (3) Water.**
- (4) Steam.**
- (5) Sewage (as defined in [IC 3-11-2-2-200](#) [sic.]).**
- (6) Telecommunications services.**

(c) The utility services use tax is imposed on the retail consumption of utility services in Indiana, measured by the gross consideration received by the seller from the sale of taxable commodities or services, at the rate of one and four-tenths percent (1.4%).

(d) The retail consumption of utility services in Indiana is exempt from the utility services use tax if the:

- (1) transaction is subject to utility receipts tax (including a public utility as defined in [IC 8-1-2-1](#)) and the utility receipts tax is paid on the gross receipts from the utility services;**
- (2) gross receipts from the transaction are not taxable under [IC 6-2.3-3](#) (classification of receipts as gross receipts) and the utility services are consumed for the purposes for which the gross receipts were excluded from taxation;**
- (3) utility services were acquired in a transaction that is wholly or partially exempt from the utility receipts tax under [IC 6-2.3-4](#) (exemptions) and the utility services are consumed for the purpose for which the utility services were exempted; or**
- (4) utility services were acquired in a transaction that is wholly or partially subject to a deduction from the utility receipts tax under [IC 6-2.3-5-6](#) (retail sales of bottled water or gas) and the utility services are consumed for the purpose for which the utility services deduction was given.**

(e) A person (defined as "taxpayer" in [IC 6-2.3-1-12](#)) is entitled to a credit against the utility services use tax imposed on the retail consumption of utility services equal to the amount, if any, of utility services use tax paid to another state. Payment of a general sales tax, purchase tax, or use tax to another state does not qualify for a credit under this SECTION.

(f) The person who consumes utility services is personally liable for the utility services use tax.

(g) Each person (taxpayer) liable for payment of utility services use tax shall register with the department and file a return for each calendar month and pay the utility services use tax that person owes for that month. A person shall file the person's return and remit the tax for a particular month with the department not more than thirty (30) days after the end of that month. Failure to comply with the procedures is subject to the penalties in [IC 6-8.1](#).

(h) Any seller of utility services may elect to register with the department to collect utility services use tax on behalf of persons liable for the utility services use tax imposed under subsection (a) of this SECTION. A seller must comply with the collection and reporting procedures specified by the department in subsection (i) of this SECTION only if the seller enters into an agreement with the department under this subsection. The act of registration with the department by the seller serves as an agreement with the department and the seller to permit the seller to collect and report utility services use tax from persons liable for the tax and impose upon the seller the collection and reporting procedures specified by the department in subsection (i) of this SECTION.

(i) (1) This subsection applies only to a person who receives utility services from a seller that enters into an agreement under subsection (h) of this SECTION. The person liable for the utility services use tax shall pay the tax to the seller from whom the person purchased the utility services, and the seller shall collect the tax as an agent for the state, if the seller has departmental permission from the department to collect the tax by registering with the department.

(2) In all other cases, the person liable for the utility services use tax shall pay the utility services use tax directly to the department.

(3) Each seller of utility services that is registered with the department to collect utility services use tax shall file a return for each calendar month and pay the utility services use tax that the seller collects for that month. A seller shall file the seller's return and remit the tax for a particular month with the department not more than thirty (30) days after the end of that month. Failure to comply with the procedures is subject to the penalties in [IC 6-8.1](#).

(j) When a seller collects the utility services use tax from a person, the seller shall, upon request, issue a receipt to that person for the utility services use tax collected.

(k) If:

(1) the department assesses the utility services use tax against a person for the person's retail consumption of utility services; and

(2) the person has already paid the utility services use tax in relation to the utility services to a seller permitted to collect the utility services use tax subsection (h) of this SECTION;

the person may avoid paying the utility services use tax to the department if the person can produce a receipt or other written evidence showing that the person paid the utility services use tax to the seller.

(l) (a) An individual who:

(1) is an employee, officer, or member of a corporation, partnership, or limited liability company that is a seller of utility services; and

(2) has a duty to remit utility services use tax to the department under an agreement entered into by the seller of utility services under subsection (h) of this SECTION by virtue of the individual's responsibilities within the corporation, partnership, or limited liability company;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

(b) An individual described in subsection (a) who knowingly fails to collect or remit the specified taxes to the state commits a Class D felony.

SECTION 4. This document expires July 1, 2007.

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